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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 687

THE UNITED STATES OF AMERICA, APPELLANT

vs.

NEAL POWERS AND RENE ALLRED

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

FILED FEBRUARY 17, 1939

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INDEX

1 IN UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Criminal No. 7354

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

H. E. HINES: NEAL POWERS AND RENE ALLRED, DEFENDANTS

Praecipe for transcript of record

Filed January 28, 1939

To the CLERK, *United States District Court,*
Southern District of Texas:

The appellant hereby directs that in preparing transcript of record in this cause in the United States District Court for the Southern District of Texas, in connection with its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries and minute entries showing return of Indictment, filing of demurrers and motions to quash and entry of order and judgment sustaining demurrers and motions to quash.
2. Indictment.
3. Demurrers and motions to quash.
4. Opinion.
5. Judgment sustaining demurrers and motions to quash.
6. Petition for appeal to the Supreme Court.
7. Statement of jurisdiction of Supreme Court.
8. Assignments of Errors.
9. Order allowing appeal.
10. Notice of service on appellee of Petition for Appeal Order allowing appeal, assignments of errors and statements as to jurisdiction.
11. Citation.
12. Praecipe.

DOUGLAS W. MCGREGOR,
United States Attorney,
Southern District of Texas.

2 [File endorsement omitted.]

3 [Caption omitted.]

4 In United States District Court

Presentment of indictment and order to file and docket
Entered September 17, 1938

The Grand Jury this day came into Court, a quorum thereof being present, and in open court presented the following bill of indictment, to wit:

The United States vs. H. E. Hines, Neal Powers, and Rene Allred. Cr. No. 7354. Charge: Conspiracy to violate Sec. 715 (b), Title 15 U. S. C. A. as amended, Vio. Sec. 88, Title 18 U. S C. A., and unlawfully transporting, etc., in Interstate Commerce, certain Petroleum Products, etc., Vio. Sec. 715 (b), Title 15 U. S. C. A., as amended, which said indictment is ordered filed and entered upon the criminal docket of this court at the Houston Division.

5 In United States District Court

[Title omitted.]

Cr. No. 7354

Docket entries

Charge: Conspiracy to violate Sec. 715 (b), Title 15 U. S. C. A. as amended, Vio. Sec. 88, Title 18 U. S. C. A., and unlawfully transporting, etc, in Interstate Commerce, Certain Petroleum Products, etc., Vio. Sec. 715 (b), Title 15 U. S. C. A., as amended.

Sept. 17, 1938. Order to file and docket entered.

Sept. 17, 1938. Indictment filed.

Sept. 17, 1938. Certificate of the Grand Jury filed.

October 14, 1938. Demurrer and Motion of Neal Powers to dismiss and quash indictment, filed.

October 14, 1938. Demurrer and motion of Rene Allred to dismiss and quash indictment, filed.

January 4, 1939. Memorandum of Court, sustaining defendants demurrers to indictment and motions to quash indictment, filed.

January 4, 1939. Order case dismissed as to Neal Powers and Rene Allred, entered.

6 In United States District Court

[Title omitted.]

Indictment

Filed September 17, 1938

At the February term of the District Court of the United States for the Southern District of Texas, Houston Division, begun and held at the city of Houston, in said district in the Fifth Circuit,

on the twenty-eighth day of February in the year of our Lord One Thousand Nine Hundred and Thirty-eight, the Grand Jurors of the United States of America, within and for said District, having been duly summoned, tried, impaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said District in said State of Texas, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

That H. E. Hines, whose first name is to the Grand Jurors unknow, Neal Powers and Rene Allred, hereinafter known and referred to as conspirators, and indicted; and Otis H. Gibson, Oren C. Roberts, D. D. Feldman, A. N. Adelson, L. R. Hepworth, M. D. Carter, Frank W. Bennett, George Arnold, Jr., Shuford Farmer, Adel Oil Company, Higrade Oil Company, Crescent Oil & Transport Company, Gulf Oil Marketing Company, Channel Transport & Marketing Company, D. R. Zachry, E. C. Hines, Ralph A. Wilson, Manice M. Hill, Charles S. Atchison, R. C. Horn, and J. A. Trotter named herein and hereinafter referred to as conspirators, but not indicted; within three years last past, in the State of Texas, and in the Southern District of Texas, and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously conspire, combine, confederate, and agree together, and with one another, and each with the other, and with divers other persons whose names are to the Grand Jurors unknown, and for that reason not mentioned herein, to commit divers, various, and sundry offenses against the United States of America, towit:

(a) To unlawfully and knowingly violate the laws of the United States, in particular an Act of Congress approved February 22, 1935, being Public No. 14, 74th Congress and entitled:

"An Act to regulate Interstate and Foreign Commerce in Petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of
7 the State laws and for other purposes," (as amended), by producing, transporting, and withdrawing from storage, petroleum, which or a constituent part of which, was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of the State of Texas, and under the regulations and orders prescribed thereunder by the Railroad Commission of the State of Texas, and its officers by producing oil in excess of the allowed oil, as provided by the orders of the Railroad Commission, and transporting said oil from the Conroe Oil Field, in Montgomery County, Texas, to a point outside of the State of Texas, towit: Marcus Hook, Pennsylvania, by means of a gathering line owned and operated by the Adeloil Company and a pipe line owned, connected thereto and operated by the Channel Transport and Marketing Company and connected with the gathering line of the Adeloil Company and oil tankers operated by the Sun Oil Company, all in violation of the

laws of the United States, and that said conspiracy was continuously in existence and in the process of execution by said conspirators and divers other persons to the Grand Jurors unknown throughout all the time from on or about the fourth day of September 1935, until on or about the fifteenth day of March 1937, and on each and every day intervening and did then and there, and on each of said days, have it understood and agreed together and among themselves, and with other persons to the Grand Jurors unknown, that said unlawful combination, confederation, conspiracy, and agreement was to be executed, carried out, and continued in existence in substantially the following manner towit:

Certain of the conspirators were to produce oil in excess of that permitted by the laws of the State of Texas and the rules and regulations of the Railroad Commission of the State of Texas, from the following leases, towit:

(1) South-Texas Development Lease, T. & N. O. Railway Survey No. 6, Montgomery County, Texas, operated by Hi-Grade Oil Company.

(2) Llewellyn lease, Hamlett Survey, Conroe, Texas, operated by Adeltex Oil Company.

Certain conspirators were to file false and fraudulent reports with the Railroad Commission, towit: Tender Operations Statements, Monthly Pipe Line and Crude Oil Storage Reports, and
8 Monthly Producers Reports; certain conspirators were to forge, procure and furnish crude oil tenders Form SW–3, duly approved by the Railroad Commission of the State of Texas, but which in fact were not valid crude oil Tenders Form SW–3; and certain conspirators were to transport said oil by pipeline from the wells producing said oil on the Leases hereinabove mentioned to ship-side at the Norsworthy Terminal, Clarion Docks and American Petroleum Company Docks, on the Houston Ship Channel, Harris County, Texas, all in violation of Section 715 (b), Title 15, United States Code Annotated.

That in pursuance of said unlawful combination, confederation, conspiracy, and agreement, and in order to effect the object and purpose of same, the defendants, and other persons to the Grand Jurors unknown, committed the following and other Overt Acts:

OVERT ACTS

(1) That on or about August 20, A. D. 1935, Neal Powers, Otis H. Gibson, D. D. Feldman, conspirators, and Mark I. Westheimer conferred in the office of the said Mark I. Westheimer, attorney for D. D. Feldman, in the Gulf Building at Houston, Texas, regarding the running, producing, and handling of contraband oil from the Conroe Field, at which time defendant Neal Powers endeavored to persuade the said Mark I. Westheimer that said transactions were in all things lawful.

(2) That sometime in the latter part of September 1935, Otis H. Gibson conferred with Charles S. Atchison and R. C. Horne, Atchison representing the owners of royalty under the aforesaid lease operated by the Higrade Oil Company, and Horne being an owner of royalty under the said lease, to secure their consent to the running of more oil than was permitted under the orders of the Railroad Commission, they to be paid the sum of fifty cents per barrel for such oil so run when the posted price at that date was $1.15 per barrel.

(3) That beginning on or about the 20th day of September 1935, George Arnold, Jr., Otis H. Gibson, H. E. Hines, L. R. Hepworth, and Gulf Oil Marketing Company caused to be commenced the construction of a pipe line in Montgomery County running from the Bertrand Pump Station of the Adeloil Company gathering system to the Higrade Lease, which said pipe line was completed and connected to said Higrade Lease on or about October 24, 1935,
9 which said construction and completion was secret and clandestine and without the authority of the Railroad Commission of the State of Texas thereunto or at any time thereafter had.

(4) That on or about November 20, 1935, Adeloil Company contracted to sell, and Channel Transport and Marketing Company contracted to buy, not less than 400 barrels per day and not exceeding 1,000 barrels per day of common storage Conroe crude oil, commencing at 7:00 a. m., January 1, 1936, and continuing until 7:00 a. m., January 1, 1937.

(5) That on or about the 25th day of October 1935, Higrade Oil Company, by H. E. Hines, filed a Producers Authorization Form SW–1, nominating the Adeloil Company to gather oil from their leases, said nomination remaining unchanged throughout the term of this conspiracy, when, in fact, said Adeloil did not gather or intend to gather the oil from said leases because the oil was gathered by that certain line set out in (3) hereof.

(6) That on or about October 25, 1935, Adeloil Company, by Manice M. Hill filed their Forecast Tender Form SW–2 for the month of October to gather the monthly allowable from the lease of the operator Higrade Oil Company, and each month thereafter during the term of this conspiracy, said Adeloil Company filed a like forecast tender to gather the oil from the Higrade Lease, when in fact said oil was gathered by that certain line set out in (3) hereof.

(7) That on or about October 18, 1935, D. D. Feldman acknowledged his signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 9,987.42 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 9,987.42 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(8) That the Channel Transport and Marketing Company did, on or about the 18th day of October 1935, receive 9,987.42 barrels of

contraband oil and did comingle such oil with other oil, so that this oil became a constituent part of said oil, which said comingled oil or a part thereof was subsequently transported from the State of Texas.

(9) That on or about October 24, 1935, Manice M. Hill acknowledged her signature to a certain SW–3 crude oil tender from
10 Adeloil Compahy to Channel Transport and Marketing Company for 10,000.00 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 10,000.00 barrels of crude oil mentioned in said tender signed by Manice M. Hill.

(10) That the Channel Transport and Marketing Company did on or about the 24th day of October 1935 receive 2,475.05 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(11) That on or about November 1, 1935, D. D. Feldman acknowledged his signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 40,000 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 40,000.00 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(12) That the Channel Transport and Marketing Company did on or about the 1st day of November 1935 receive 4,043.14 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(13) That on or about November 20, 1935, D. D. Feldman acknowledged his signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 9,528 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 9,528 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(14) That the Channel Transport and Marketing Company did on or about the 20th day of November 1935 receive 1,601.03 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof, was subsequently transported from the State of Texas.

(15) On or about November 15, 1935, Adeltex Company filed with the Railroad Commission their monthly producers Report Statewide Form E. B. for the month of October, falsely reporting that no
11 oil in excess of the allowable oil was produced and delivered from said lease, whereas the true fact is that a much greater amount of oil than the allowable oil was produced and delivered from said lease during the month of October 1935.

(16) On or about December 5, 1935, application for a charter of Crescent Oil and Transport Company was filed, said application being approved on the 7th day of December 1935, and incorporated as a Texas corporation.

(17) That on or about December 6, 1935, Manice M. Hill acknowledged her signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 35,000 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 35,000 barrels of crude oil mentioned in said tender signed by Manice M. Hill.

(18) That the Channel Transport and Marketing Company did, on or about the 6th day of December 1935 receive 11,466.14 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(19) That on or about December 17, 1935, Manice M. Hill acknowledged her signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 10,000 barrels of crude oil failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 10,000 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(20) That the Channel Transport and Marketing Company did, on or about the 17th day of December 1935 receive 10,000 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(21) On or about December 15, 1935, Adeltex Company filed with the Railroad Commission their monthly Producers Report Statewide Form E. B. for the month of November, falsely reporting that no oil in excess of the allowable oil was produced and delivered from said lease, whereas, the true fact is that a much greater amount of
12 oil than the allowable oil was produced and delivered from said lease during the month of November 1935.

(22) That on or about December 21, 1935, defendant Gulf Oil Marketing Company paid the balance due on the purchase of the pipe to construct the line set out in (3) hereof.

(23) That on or about January 4, 1936, Manice M. Hill acknowledged her signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 38,000 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 38,000 barrels of crude oil mentioned in said tender signed by Manice M. Hill.

(24) That the Channel Transport and Marketing Company did, on or about the 4th day of January 1936, receive 25,361.55 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil, or a part thereof was subsequently transported from the State of Texas.

(25) That on or about January 11, 1936, D. D. Feldman acknowledged his signature to a certain SW-3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 15,000 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 15,000 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(26) That the Channel Transport and Marketing Company did, on or about the 11th day of January 1936, receive 8,405.51 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(27) That on or about January 15, A. D. 1936, M. D. Carter, Neal Powers, and Otis H. Gibson met at the Manhattan Cafe, in Victoria, Texas, at which time the said Otis H. Gibson paid to M. D. Carter approximately $700.00, representing five cents per barrel for the contraband oil run during the month of December 1935.

(28) On or about January 15, 1936, Adeltex Company filed with the Railroad Commission their monthly Producers Report Statewide Form E. B. for the month of December, falsely reporting that
13 no oil in excess of the allowable oil was produced and delivered from said lease, whereas the true fact is, that a much greater amount of oil than the allowable oil was produced and delivered from said lease during the month of December 1935.

(29) That on or about February 3, 1936, D. D. Feldman acknowledged his signature to a certain SW-3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 12,000 barrels of crude oil failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 12,000 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(30) That the Channel Transport and Marketing Company did, on or about the 3rd day of February 1936, receive 6,743.52 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(31) That on or about February 3, 1936, D. D. Feldman acknowledged his signature to a certain SW-3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 30,000 barrels of crude oil failing to recite that said oil had been or would be received under authority of a valid tender having any relation or con-

nection whatsoever with the Adeloil Company or the 30,000 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(32) That the Channel Transport and Marketing Company did on or about the 3rd day of February 1936, receive 13,676.03 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(33) Neither prior to February 10, 1936, nor at any time thereafter, did Adeloil Company the owner of the line from the Higrade lease to Bertrand tanks on the Adeloil line, Channel Transport and Marketing Company, file their respective correct tender operations statements Form SW–6 with the Railroad Commission of Texas, as provided by law.

(34) On or about February 15, 1936, Adeltex Company filed with the Railroad Commission their monthly Producer's Report Statewide Form E. B. for the month of January, falsely reporting that
14 not in excess of the allowable oil was produced and delivered from said lease, whereas the true fact is that a much greater amount of oil than the allowable oil was produced and delivered from said lease during the month of January 1936.

(35) That on or about March 4, 1936, D. D. Feldman acknowledged his signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 6,500 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 6,500 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(36) That the Channel Transport and Marketing Company did, on or about the 4th day of March 1936, receive 4,812.91 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof, was subsequently transported from the State of Texas.

(37) That on or about March 3, 1936, D. D. Feldman acknowledged his signature to a certain SW–3 crude oil tender from Adeloil Company to Channel Transport and Marketing Company for 30,000 barrels of crude oil, failing to recite that said oil had been or would be received under authority of a valid tender having any relation or connection whatsoever with the Adeloil Company or the 30,000 barrels of crude oil mentioned in said tender signed by D. D. Feldman.

(38) That the Channel Transport and Marketing Company did on or about the 3rd day of March 1936, receive 16,887.40 barrels of contraband oil and did co-mingle such oil with other oil, so that this oil became a constituent part of said oil, which said co-mingled oil or a part thereof was subsequently transported from the State of Texas.

(39) That on or about March 10, 1936, Otis H. Gibson, M. D. Carter, and Rene Allred met in the Roosevelt Hotel at Waco, Texas, and conferred regarding the substitution of false E. D. pipe line reports of

the Channel Transport and Marketing Company in the Railroad Commission's Office at Austin, which reports related to contraband oil.

(40) That on or about March 12, 1936, Neal Powers at Tyler, Texas, telephoned Rene Allred at the Baker Hotel, Dallas, Texas.

(41) That on or about March 14 A. D. 1936, Rene Allred at Tyler, Texas, placed a long distance telephone call for M. D. Carter at the Roosevelt Hotel, Waco, Texas.

15 (42) That on or about March 18, 1936, Rene Allred at Tyler, Texas, called Otis H. Gibson at Houston, Texas, by long distance telephone.

(43) That on or about April 3 A. D. 1936, Neal Powers at Tyler, Texas, talking by long distance telephone to Abe N. Adelson at Houston, Texas, assured the said Abe N. Adelson that all matters connected with the producing, transporting, and handling of the said contraband oil were all right and that he, Adelson, would not get into any trouble.

(44) That on or about April 6, 1936, Frank Bennett furnished an aeroplane to defendants Otis H. Gibson and Shuford Farmer to fly to Fort Worth.

(45) That on or about April 6, 1936, defendant Shuford Farmer, on behalf of Frank Bennett, offered Olin Culberson, Director of Pipe Department of the Oil and Gas Division of the Railroad Commission of the State of Texas, the sum of $2,500.00 per month, if the said Olin Culberson would cover up a 30,000 barrel hot tender.

That said unlawful combination, confederation conspiracy and agreement, and the acts of the said H. E. Hines, the said Neal Powers, and the said Rene Allred, and other persons to the Grand Jurors unknown in pursuance thereof were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforssaid do further present: That H. E. Hines, whose first name is to the Grand Jurors unknown, Neal Powers, and Rene Allred on or about the twenty-eighth day of November A. D. 1935 within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas to wit: Marcus Hook, Pennsylvania, certain petroleum products, to wit: One Hundred and Nine Thousand four hundred sixteen and 47/100 (109,416.47) barrels of crude oil petroleum, a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of

Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of
16 such State; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That H. E. Hines whose first name is to the grand jurors unknown, Neal Powers and Rene Allred, on or about the fourth day of November A. D. 1935, within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce, from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas to wit: Marcus Hook, Pennsylvania, certain petroleum products to wit: One hundred and eight thousand six hundred seventy-four and 67/100 (108,674.67) barrels of crude oil petroleum, a constituent part of which was produced, transported and withdrawn from storage in excess of the amounts permitted to be produced, transported and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That H. E. Hines, whose first name is to the Grand Jurors unknown, Neal Powers and Rene Allred, on or about the fourteenth day of December A. D. 1935, within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce, from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas to wit: Marcus Hook, Pennsylvania, certain petroleum products, to wit: One hundred and six thousand, seven hundred seventy-nine and 86/100 (106,779.86) barrels of crude oil petroleum a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the
17 State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present: That H. E. Hines, whose first name is to the grand jurors unknown, Neal Powers and Rene Allred, on or about the thirtieth day of December A. D. 1935, within the aforesaid division, district and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce, from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas, to wit: Marcus Hook, Pennsylvania, certain petroleum products, to wit: One hundred and seven thousand, two hundred sixty and 79/100 (107,260.79) barrels of crude oil petroleum a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That H. E. Hines whose first name is to the grand jurors unknown, Neal Powers, and Rene Allred, on or about the seventeenth day of January A. D. 1936, within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce, from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas, to wit: Marcus Hook, Pennsylvania, certain petroleum products to wit: One hundred and six thousand three hundred two
18 and 42/100(106,302.42) barrels of crude oil petroleum, a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

SEVENTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present: That H. E. Hines whose first name is to the grand jurors unknown, Neal Powers and Rene Allred, on or about the first day of February A. D. 1936, within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and

there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce, from the Conroe Oil Field in Montgomery County, State of Texas, to a point outside of the State of Texas, to wit: Marcus Hook, Pennsylvania, certain petroleum products, to wit: One hundred and eight thousand, two hundred twenty-nine and 52/100 (108,229.52) barrels of crude oil petroleum, a constituent part of which was produced, transported and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State; contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

EIGHTH COUNT

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present: That H. E. Hines, whose first name is to the grand jurors unknown, Neal Powers and Rene Allred, on or about the twentieth day of February A. D. 1936, within the aforesaid division, district, and circuit and within the jurisdiction of this Court did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce from the Conroe Oil Field in Montgomery County, State of Texas to a point outside of the State of Texas to wit: Marcus Hook, Pennsylvania, certain petroleum products to wit: One Hundred and eight thousand eight hundred thirteen and 19/100 (108,813.19) barrels of crude oil petroleum,
19 a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

NINTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present: That H. E. Hines, whose first name is to the grand jurors unknown, Neal Powers and Rene Allred, on or about the twenty-eighth day of February A. D. 1936, within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly and feloniously transport and cause to be transported in interstate commerce from the Conroe Oil Field in Montgomery County, State of Texas to a point outside of the State of Texas to wit: Marcus Hook, Pennsylvania, certain petroleum products to wit: One hundred and seven thousand, one hundred fifty four and 87/100 (107,154 87) barrels of crude oil petroleum, a

constituent part of which was produced, transported and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of the State of Texas and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

TENTH COUNT

And the Grand Jurors aforesaid upon their oaths aforesaid do further present: That H. E. Hines whose first name is to the grand jurors unknown, Neal Powers, and Rene Allred, on or about the twentieth day of March A. D. 1936 within the aforesaid division, district, and circuit and within the jurisdiction of this Court, did then and there unlawfully, knowingly, and feloniously transport and cause to be transported in interstate commerce from the Conroe Oil Field in Montgomery County, State of Texas to a point outside of the State of Texas, to wit: Marcus Hook, Pennsylvania, certain petroleum products to wit: One hundred and seven thousand, one hundred forty
20 one and 10/100 (107,141.10) barrels of crude oil petroleum, a constituent part of which was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

RAY FOGLE,
Foreman of Grand Jury.

DOUGLAS W. MCGREGOR,
United States Attorney.
GEORGE P. RED,
Assistant United States Attorney.
WILLIAM W. BARRON,
Special Assistant to the Attorney General.

[Endorsements:] No. 7354 Cr- United States District Court, Southern District of Texas, Houston Division. The United States of America vs. H. E. Hines, Neal Powers, and Rene Allred. Indictment. Conspiracy to vio Sec. 715 (b) Tit. 15 U. S. C. A. as amended, Vio Sec. 88, Tit. 18 U. S. C. A. and unlawfully transporting, etc. in interstate commerce, certain petroleum products, etc. Vio Sec. 715 (b) Tit. 15, U. S. C. A. as amended. A True Bill. Ray Fogle, Foreman.

[File endorsement omitted.]

21 In United States District Court

[Title omitted.]

Demurrer and motion of Neal Powers to dismiss and quash the indictment

Filed Oct. 14, 1938

Now comes the defendant, Neal Powers, and before entering his plea upon arraignment herein files this, his demurrer to the indictment in this cause and his motion to dismiss and quash said indictment, embracing said demurrer and said motions together in this single pleading, and for grounds thereof says:

I

That said indictment shows on its face that this Court has no jurisdiction of the subject matter of said indictment.

II

That said indictment and each and every count thereof does not state facts sufficient to constitute an offense against the United States or the laws thereof.

III

The statute of the United States creating the offense charged in said indictment and under which said indictment was found was not in force at the time said indictment was found and returned.

IV

The Statute of the United States creating the offenses charged in said indictment and under which said indictment was found, and which statute it is charged in Count 1 this defendant conspired
22 to violate and which substantive offenses are charged in Counts 2 to 10, being the Act of 1935, Section 3, and commonly cited as U. S. C. A., Title 15, Section 715b, and ordinarily referred to as the Connally Act of 1935, expired by its own terms on June 16, 1937, without provision therein contained for the continuance thereafter of the penalty therein prescribed as to offenses theretofore committed, and said indictment charges the commission of no offense after March 15, 1937, but said conspiracy was alleged to have commenced on September 4, 1935, and to have continued until March 15, 1937, and the overt acts, being forty-five in number, are dated from August 20, 1935, up to and including April 6, 1936, and the substantive offenses are alleged to have been committed on November 29, 1935, November 4, 1935, December 14, 1935, December 30,

1935, January 17, 1936, February 1, 1936, February 20, 1936, February 28, 1936, and March 20, 1936.

The Act of Congress of June 14, 1937, purporting to extend for an additional period of two years the Connally Act of 1935, and the Statute of the United States creating the offense charged in said indictment which the defendant is alleged to have conspired to have violated, and which is charged to have been violated in the counts charging substantive offenses, in so far as said Act of 1937 purports to or may be construed as to continue the penalties prescribed by said Connally Act of 1935, is an ex post facto law, which would extend and affect an offense or offenses committed in the past and alters the relation of the defendant to said prior offense and its consequences, and alters the situation of said defendant to his disadvantage, and seeks to criminally punish the said defendant under a law prescribed for his government by the sovereign authority after the imputed offense was committed, and which did not exist as a law at the time of the commission of the offense and is in violation of the Constitution of the United States of America and the 5th Amendment thereto and is void.

VI

The Connally Act of June 14th, 1937, purporting to extend for an additional period of two years the original Connally Act
23 of 1935, is to be construed prospectively as applying only to offenses committed after the adoption of said act and under such construction the original Connally Act of 1935 has expired at this time and had expired at the time the indictment in this case was returned on the 17th day of September A. D. 1938, and the law under which said offense was committed not being in force at this time and at the time the indictment was returned no prosecution can be brought for said offense or offenses and any prosecution under said law for said offenses falls.

VII

The effect of the foregoing demurrers and objections to the indictment is not abrogated by any saving clause either in the original Connally Act or in the amendatory and extending act of 1937, nor by any statute or general saving clause of the United States.

VIII

The indictment in this case seeks to charge a conspiracy to violate the Connally Act of 1935 and to charge substantive offenses committed against said act of 1935. Said alleged violations of the law depend upon the shipment in interstate commerce of the contraband oil, which oil is defined as "petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported,

or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a state or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such state, or any of the products of such petroleum." Said indictment predicates the offense charged upon the violation or shipment of oil produced in violation of the proration laws of the State of Texas. The Proration Act of the State of Texas of 1935 under which it is charged the oil involved in this indictment was contraband, being the Act of 1935, 44th Legislature, Regular Session, Chapter 76, page 180, and commonly known as 6049c and
24 6049d of Vernon's Texas Statutes 1938, expired under its own terms under Section 20 of said act on September 1, 1937, and is no longer in force and was not in force at the time the indictment in this case was returned. The extension of said Texas act by the amendment of Section 20 of said Act by the Act of 1937, 45th Legislature, Chapter 15, page 17, in so far as it purports to continue the penalties arising for offenses committed under the Act of 1935, is ex post facto and violates the Constitution of the United States of America and the 5th Amendment thereto, and the Constitution of the State of Texas, Article 1, Section 16, and is void.

IX

The Texas Act of 1937, 45th Legislature, Chapter 15, page 17, attempting to extend the Texas Proration Law of 1935 by amending Section 20 thereof, is to be construed prospectively as applying to offenses committed in the future and said act does not support the prosecution of prior offenses committed before the expiration of the original act so as to support an indictment brought after the expiration of said original act and a prosecution pending after the expiration of the original act.

X

The effect of the foregoing construction is not abrogated by any saving clause either in the original Texas Proration Act or in the attempted extension thereof or in any general saving clause under the laws of the State of Texas.

XI

The Statutes of the State of Texas and the orders, rules, and regulations of the Railroad Commission sought to be referred to in said indictment are not in force or effect because the purported and attempted extension of the Proration Act of 1935 by the amendment of Section 20 of said Act by the Act of 1937, 45th Legislature, Chapter 15, page 17, attempted to revive, reenact, and extend the Texas Proration Act of 1935 in its entirety without reenacting the section and sections of said act of 1935 which it was sought to revive and without

reenacting and publishing said act of 1935 at length, and violates Article 3, Section 36, of the Constitution of Texas which reads as follows: "Section 36. No law shall be revived or amended by
25 reference to its title but in such case the act revived or the section or sections amended shall be reenacted and published at length."

XII

The said indictment, and each and every count thereof, fail to charge a violation of an Act of Congress approved on February 25, 1935, Chapter 18, Section 31, 49th Statutes at Large 30, also known as Section 715b, Title 15, U. S. C. A., and commonly called the Connally Act of 1935.

XIII

The Act of February 25, 1935, 49 Statutes at Large 30, Section 715b, Title 15, U. S. C. A., is unconstitutional and void because it is in violation of the Constitution of the United States and the 5th, 9th, and 10th Amendments thereto.

XIV

The indictment in this case does not charge a violation of the Connally Act because the said act under its terms applies to oil or a constituent part thereof that *was produced*, transported, or withdrawn from storage prior to the time the Connally Act went into effect on, to wit, February 22, 1935, and to that oil which was produced, transported, or withdrawn from storage in excess of the amount that was permitted to be produced, transported, or withdrawn from storage by the Statutes of the State of Texas or the rules of the Railroad Commission prescribed thereunder and in existence on said date, and under its terms does not purport to apply to oil produced, transported, or withdrawn from storage in the future in violation of the Statutes of the State of Texas or the rules and regulations of the Railroad Commission to be prescribed thereunder in the future, and it appears from the allegations of the indictment that all of the contraband oil alleged to have been transported in interstate commerce in said indictment was produced, transported, and withdrawn from storage after the passage of said act.

XV

The Connally Act of 1935, by the Act of February 22, 1935,
26 and the extension thereof of June 14, 1937, is invalid because it seeks to delegate to the Legislature of the State of Texas and to the Railroad Commission of the State of Texas and to any board, commission, officer or other duly authorized agency of such state, the power in the future to declare what is federal offense and such statute constitutes an unlawful delegation of the powers of the legislative branch of the government of the United States and of the sovereignty of the United States in violation of the fundametal plan and form of the Constitution of the United States.

XVI

The Connally Act of 1935, being the act of February 22, 1935, and the extension thereof of June 14, 1937, is unconstitutional and void under the 6th Amendment of the Constitution of the United States because said act does not sufficiently define an offense so as to inform the accused in advance of the nature and cause of the accusation with which he is charged or to be charged in that said act leaves to the determination of what shall constitute the offense and the description of the offense, violations of the orders of state boards, commissions, and agencies, of which the defendant and courts are not required to take judicial knowledge and which orders are to be passed and promulgated in the future and which orders the accused is unable to know from the act itself.

XVII

The indictment is wholly insufficient because it appears from the face thereof and from the allegations of the various counts thereof that the conspiracy and several offenses were committed and completed more than three years prior to the returning of the indictment in this case and that the prosecution for said conspiracy and offenses at the time of the bringing of the indictment were barred by the three-year statute of limitations, and there are no exceptions to the limitation statute which would require the raising of this question on a plea of not guilty.

27

XVIII

That said indictment, and each and every count thereof, is so uncertain and indefinite that said indictment does not apprise this defendant of the nature of the crime with which he is charged, and the said indictment, and each and every count thereof, does not set forth the necessary elements of the offense sought to be charged as required by the 6th Amendment to the Constitution of the United States.

XIX

Defendant, Neal Powers, says that said indictment is insufficient, and in particular Count 1, paragraph 2, on page 1 thereof, wherein it is alleged that the conspiracy was formed in the Southern District of Texas and within the jurisdiction of this Court, because the particular time, place, and circumstances under which said agreement and conspiracy was formed are not set out with sufficient definiteness to enable this defendant to prepare his defense.

XX

Defendant says that said indictment, and Count 1 thereof, is insufficient and in particular on page 2 thereof, wherein it is alleged that the defendant violated the Act of February 22, 1935, being Public, No.

14, 74th Congress, because said act has expired and it is not sought to bring the offenses charged under the provisions of the amendment to said act extending the provisions of said act.

XXI

Defendant says that said indictment, and Count 1 thereof, is insufficient and in particular on page 2 thereof, because said indictment does not allege whether the offenses charged were brought under the original act of 1935 or under the amended act.

XXII

Said indictment, and Count 1 thereof, is insufficient, and
28 in particular on page 2 thereof, because it is alleged that the defendants conspired to transport through interstate commerce oil which was produced, transported and withdrawn from storage in excess of the amounts permitted to be produced, which allegations would refer to oil produced prior to the formation of the conspiracy, while the subsequent allegations of the indictment setting forth the overt acts refer to oil produced after the formation of such conspiracy, and said allegations are inconsistent.

XXIII

Said indictment, and Count 1 thereof, is insufficient, and particularly on page 2 thereof, because it is not alleged that this defendant or any of the defendants knew that the oil which was to be transported in interstate commerce was contraband or that said oil had been produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of the State of Texas and under the orders, rules, and regulations of the Railroad Commission of the State of Texas.

XXIV

Said indictment, and Count 1 thereof, and particularly on page 2 thereof, does not allege that the oil transported in interstate commerce was unlawfully, knowlingly, and willfully produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn under the laws of the State of Texas and under the orders, rules, and regulations of the Railroad Commission of the State of Texas.

XXV

Said indictment, and Count 1 thereof, and particularly on page 2 thereof, is insufficient in that it alleges that this defendant and the several conspirators conspired to commit divers, various and sundry offenses against the United States of America, to-wit: conspired to

violate the Connally Act of 1935, and said allegations is duplic-
29 itous if said conspiracy and said Count 1 are based upon a conspiracy to commit more than one offense and if said Count is limited to a conspiracy to violate the Connally Act, then said allegations alleging a conspiracy to commit various and sundry offenses is repugnant to the allegations that the defendants conspired to violate the Connally Act, and said allegation is prejudicial in that it would seek to impress the court and jury with the idea that the defendants had entered into a conspiracy to commit several offenses but that the Government was limiting this prosecution to the conspiracy to commit one offense.

XXVI

Said indictment, and Count 1 thereof, and in particular on page 2 thereof, is insufficient because where said indictment alleges that defendants conspired to violate the Connally Act of 1935 by producing and transporting and withdrawing from storage petroleum which was produced and transported and withdrawn in excess of amounts permitted by the laws of the State of Texas and the orders, rules, and regulations of the Railroad Commission, said acts do not constitute a violation of the Connally Act, and if said allegation can be considered as surplusage said allegation is prejudicial in charging the commission of offenses not prohibited by the Connally Act.

XXVII

Said indictment, and Count 1 thereof, and particularly on pages 2 and 3 thereof, is insufficient because in alleging that the defendants conspired to violate the Connally Act by transporting in interstate commerce oil produced in violation of the Texas laws and the orders of the Railroad Commission of Texas, it is not alleged what specific law of the State of Texas, of which provision or section of the Texas law said oil was produced, transported and withdrawn in violation of, and it is not alleged which rule of the Railroad Commission of the State of Texas and its officers said oil was produced, transported and withdrawn from storage in violation of. That there are many sections of the Texas Proration Law prohibiting and making
30 unlawful various and sundry acts. That there are many and varied rules and regulations of the Railroad Commission of Texas having to do with spacing, proration, storage, production, etc., applying to various oil fields in the State of Texas and to various wells and properties within the same oil field, and said Count and said allegations of said indictment do not state what law and what section of the law and what provision of the law, and which particular rule and regulation of the Railroad Commission was violated in the production of said alleged contraband oil, and this defendant is unable from said indictment to know what statute, rules, and regulations have been violated by the production, transportation, and with-

drawing of the oil from storage which it is alleged this defendant conspired to transport through interstate commerce.

XXVIII

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient because the indictment attempts to allege that certain conspirators did do various and separate acts which it appears constitute separate conspiracies and which are not connected by the allegations of the indictment to the general conspiracy under which the defendants are charged to have conspired to violate the Connally Act by the transporting of contraband oil through interstate commerce.

XXIX

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient wherein it is alleged that certain conspirators did produce oil in excess of that permitted by the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas from two designated leases, because it does not appear in the allegations of said indictment which rules and regulations of the Railroad Commission were to be violated by the production of said oil from said leases, whether spacing rules, proration rules, storage rules, transportation rules, rules requiring certain reports and records, and the defendant is unable to ascertain from said indictment which particular rules and regulations it is intended by said indictment to allege that said oil was to be produced in violation of.

31

XXX

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient insofar as it alleges that certain conspirators were to file false and fraudulent tender, operation statements, monthly pipeline and crude oil storage reports, and monthly producer's reports, because the nature and character of said false and fraudulent statements is not set out and it does not appear how said tender, operation statements, or said pipeline reports or said producer's reports were false and fraudulent, and this defendant is unable to know with what particular false and fraudulent reports he is charged.

XXXI

Said indictment, and Count 1 thereof, and particularly page 3 thereof, is insufficient wherein it is alleged that said conspirators were to forge, procure, and furnish crude oil tenders, because it does not appear from the allegations thereof of what the forgery consisted and what particular tenders were to be forged and whose name was to be forged to said tenders, and because it is not in violation of any rule or regulation of the Railroad Commission of Texas.

to procure and furnish crude oil tenders if said tenders were not false, fraudulent, or forged.

XXXII

Said indictment, and Count 1 thereof, and particularly page 3 thereof, is insufficient wherein it is alleged beginning "certain conspirators were to file false and fraudulent reports" and ending, "which in fact were not valid crude oil tenders form SW3," because it is not alleged that the oil covered by said false and fraudulent reports and by said forged and improper tenders was or was to be in excess of the amount of oil permitted to be produced by the laws of the State of Texas and the rules and regulations of the Railroad Commission of Texas, and it is not a violation of the Connally Act to transport in interstate commerce any oil cov-
32 ered by a false and fraudulent report or by a forged or improper tender unless said oil was in excess of the amount permitted to be produced by the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas.

XXXIII

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient wherein it is alleged that certain conspirators were to transport oil by pipeline to certain docks on the Houston Ship Channel in Harris County, Texas, because such transportation is not an interstate shipment and does not constitute a violation of the laws of the United States and does not constitute a violation of Section 715b, Title 15, U. S. C. A., as alleged in said paragraph of said indictment.

XXXIV

Said indictment, and Count 1 thereof, is insufficient in the allegations of the overt acts, in that none of said overt acts, numbered from 1 to 45, have sufficient allegations nor are there sufficient allegations in the other portions of the indictment to show how said overt acts affected the object and purpose of the conspiracy with which the defendants are charged. All of said overt acts are mere allegations of things alleged to have been done that in themselves are not illegal and which are not, under the allegations of the indictment, necessarily connected with or a part of the alleged conspiracy. Said indictment nowhere states any facts indicating in what respect the overt acts alleged constituted a violation of the law.

XXXV

Said indictment is insufficient in Count 1 thereof as to all the overt acts alleged except 1, 27, 40 and 43, because none of said overt acts are connected with the defendant, Neal Powers, and there are no

allegations in the indictment that seek to connect the said defendant to said overt acts or show how said overt acts in any way were connected with the conspiracy with which the said Neal Powers may have been connected, if he was connected with a conspiracy.

33

XXXVI

Said indictment, and Count 1 thereof, is insufficient wherein an overt act is alleged to have been committed on August 20, 1935, by Neal Powers, Otis H. Gibson, and D. D. Feldman, because said overt act occurred prior to the 4th day of September A. D. 1935, on which date it is alleged the conspiracy commenced and which is the first date on which it is alleged the defendant, Neal Powers, had any connection with such conspiracy.

XXXVII

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the first overt act, because there is no allegation as to who Mark I. Westheimer was and he is not alleged to be a conspirator and could not be included in the designation of those to the grand jury unknown, and it does not appear who the said Mark I. Westheimer was or what effect, if any, it had upon the conspiracy if the said Neal Powers had been successful in persuading the said Westheimer that the said transactions were in all things lawful.

XXXVIII

Said indictment, and Count 1 thereof, is insufficient in the second overt act alleged, wherein it is alleged that the defendants endeavored to secure the consent of the owner of certain royalties to secure permission for the running of more oil than was permitted under the orders of the Railroad Commission because said allegation is indefinite, does not state the amount of oil, does not state what the order of the Railroad Commission was fixing the amount of the allowable oil, and it is not made sufficiently plain which order of the Railroad Commission was sought to be violated.

XXXIX

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the third overt act because it would not be unlawful or in violation of any laws of the State of Texas or of the Railroad Commission to construct the pipeline referred to without the consent and knowledge of the Railroad Commission and the allegation
34 that the construction and completion was secret and clandestine is prejudicial and is an effort to make the court and jury believe that an innocent act was wrongful and fraudulent.

XL

Said indictment, and Count 1 thereof, is insufficient in the allegation of the fourth overt act because said act is wholly lawful and it does not appear that the amount of oil which was contracted to be sold was excess oil or that the purchase and contract to purchase said oil was in any way unlawful.

XLI

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the overt acts numbered 7–20, inclusive, 24–26, inclusive, 32, 36, and 38, because in none of said allegations as to overt acts is it alleged what order of the Railroad Commission or law of the State of Texas said oil was produced in violation of. Said allegations do not set out the legal allowable for oil in the Conroe field nor on said lease in said field, and the allegation that the specific amount of oil alleged to have been produced as contraband oil was contraband is a conclusion and the indictment should state the facts which constituted and rendered such oil contraband oil.

XLII

Said indictment, and Count 1 thereof, is insufficient in the allegation of the twenty-seventh overt act because the contraband oil for which it is alleged M. D. Carter was paid $700.00 is not sufficiently described and there is no allegation showing how said payment for said contraband oil was in any way connected with the conspiracy with which the defendant, Neal Powers, is charged and that no allegation is made that the defendant, Neal Powers, and the defendant, Renne Allred, had any knowledge said money was being paid or for what the payment was being made if it was made, or that said payment was made in carrying out the particular conspiracy alleged.

35 XLIII

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the twenty-eighth overt act because said allegation is indefinite in alleging that a much greater amount of oil than the allowable was produced from said lease during the month of December 1935. Said allegations should state the legal amount permitted under the rules and regulations of the Railroad Commission and the actual amount which was produced.

XLIV

Said indictment, and Count 1 thereof, is insufficient in the allegation of the thirty-fourth overt act wherein it is alleged that a greater amount of oil than the allowable was produced and delivered from said lease during the month of January 1936, because the allegation

is indefinite and said allegation should set out the legal allowable and the actual amount of oil produced during said month.

XLV

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the fortieth overt act because said allegation does not set out the substance of the telephone talk with Renne Allred and does not allege that said telephone talk was in furtherance of the conspiracy and it appears that said act was a perfectly lawful act and the presumption is that it would be lawful in the absence of some express allegation connection with the talk in some way with the conspiracy with which the defendants are charged.

The same objection aforesaid applies to the allegations as to the forty-first and forty-second overt acts.

XLVI

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the forty-third overt act because it appears in the allegations therein that said act could not have in any way contributed to or assisted in the carrying out of the conspiracy but was a mere transaction between certain of the conspirators between themselves and not in furtherance of the general conspiracy and had reference to
36 declarations of the conspirators after the commission of the acts referred to.

XLVII

Said indictment, and Count 1 thereof, is insufficient as to the allegations of the forty-fourth overt act because there is no allegation connecting said act with the conspiracy and it does not appear from said allegation that said act was or could have been in any way connected with or in furtherance of the general conspiracy.

XLVIII

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the forty-fifth overt act because it is not alleged that the 30,000 barrels of hot oil tender had reference to any oil or a part of any oil which was transported in interstate commerce while contraband in nature. That said allegation is a mere isolated transaction attempting to show a violation of a state law in no way connected with the general conspiracy and charges a separate and isolated offense not cognizable by federal law.

XLIX

Said indictment, and Counts 2 to 10 thereof, are insufficient because in none of said counts is it alleged that the defendants knew that the oil alleged to have been transported in interstate commerce or a constitutent part thereof was transported or withdrawn from storage in

excess of the amount permitted to be produced, transported, and withdrawn from storage under the laws of the State of Texas and the orders, rules, and regulations of the Railroad Commission of the State of Texas.

L

Said indictment is insufficient as to Counts 2 to 10 thereof because it is not alleged in any of said counts what particular law or provision of the Texas law or what particular rule, regulation, or order prescribed by the Railroad Commission was violated so as to constitute the oil referred to as contraband oil.

37

LI

Said indictment is insufficient as to Counts 2 to 10 thereof because the allegations therein are indefinite and none of said counts allege the amount or proportion of the oil transported which constituted contraband oil, if any.

LII

Said indictment is insufficient as to Counts 2 to 10 thereof because in none of said counts is it alleged how the oil was transported, either by pipeline, train, or ship, and it is not alleged when said oil was produced or where said oil was produced, or upon what lease said oil was produced, so as to connect the production and transportation of said oil with the violation of any particular rule or decision of the Railroad Commission of the State of Texas.

LIII

Said indictment, and Count 1 thereof, is insufficient because taking the allegations of said indictment as a whole and all of the overt acts alleged in said Count 1, same show that the defendant's agreement, if any, was to produce, transport, and withdraw from storage oil and ship the same in a purely intrastate transaction from the leases referred to the terminal in Houston, Texas, at the Houston Ship Channel, and that said plan and agreement did not contemplate or it is not alleged that it contemplated that said oil should enter into or be transported in interstate commerce, and that there is no allegation that any of the defendants knew or planned that said oil should enter into or be transported in interstate commerce after it came to rest at the Houston Ship Channel.

Wherefore, defendant prays that his demurrers to the indictment be sustained and that said indictment be quashed and dismissed and that this prosecution be dismissed.

This the 14th day of October, A. D. 1938.

Respectfully submitted.

NEAL POWERS,
Defendant.

38 [File endorsement omitted.]

39 In United States District Court

[Title omitted.]

Demurrer and motion of Rene Allred to dismiss and quash the indictment

Filed Oct. 14, 1938

Now comes the defendant, Rene Allred, and before entering his plea upon arraignment herein files this, his demurrer to the indictment in this cause and his motion to dismiss and quash said indictment, embracing said demurrer and said motions together in this single pleading, and for grounds thereof says:

I

That said indictment shows on its face that this court has no jurisdiction of the subject matter of said indictment.

II

That said indictment and each and every count thereof does not state facts sufficient to constitute an offense against the United States or the laws thereof.

III

The statute of the United States creating the offense charged in said indictment and under which said indictment was found was not in force at the time said indictment was found and returned.

IV

The statute of the United States creating the offenses charged in said indictment and under which said indictment was found, and which statute it is charged in Count 1 this defendant conspired to violate and which substantive offenses are charged
40 in Counts 2 to 10, being the Act of 1935, Section 3, and commonly cited as U. S. C. A., Title 15, Section 715b, and ordinarily referred to as the Connally Act of 1935, expired by its own terms on June 16, 1937, without provision therein contained for the continuance thereafter of the penalty therein prescribed as to offenses theretofore committed, and said indictment charges the commission of no offense after March 15, 1937, but said conspiracy was alleged to have commenced on September 4, 1935, and to have continued until March 15, 1937, and the overt acts, being forty-five in number, are dated from August 20, 1935, up to and including April 6, 1936, and the substantive offenses are alleged to have been committed on

November 29, 1935, November 4, 1935, December 14, 1935, December 30, 1935, January 17, 1936, February 1, 1936, February 20, 1936, February 28, 1936, and March 20, 1936.

V

The Act of Congress of June 14, 1937, purporting to extend for an additional period of two years the Connally Act of 1935, and the statute of the United States creating the offense charged in said indictment which the defendant is alleged to have conspired to have violated, and which is charged to have been violated in the counts charging substantive offenses, in so far as said Act of 1937 purports to or may be construed as to continue the penalties prescribed by said Connally Act of 1935, is an ex post facto law, which would extend and affect an offense or offenses committed in the past and alters the relation of the defendant to said prior offense and its consequences, and alters the situation of said defendant to his disadvantage, and seeks to criminally punish the said defendant under a law prescribed for his government by the sovereign authority after the imputed offense was committed, and which did not exist as a law at the time of the commission of the offense and is in
41 violation of the Constitution of the United States of America and the 5th Amendment thereto and is void.

VI

The Connally Act of June 14th, 1937, purporting to extend for an additional period of two years the original Connally Act of 1935, is to be construed prospectively as applying only to offenses committed after the adoption of said act and under such construction the original Connally Act of 1935 has expired at this time and had expired at the time the indictment in this case was returned on the 17th day of September A. D. 1938, and the law under which said offense was committed not being in force at this time and at the time the indictment was returned no prosecution can be brought for said offense or offenses and any prosecution under said law for said offenses falls.

VII

The effect of the foregoing demurrers and objections to the indictment is not abrogated by any saving clause either in the original Connally Act or in the amendatory and extending act of 1937, nor by any statute or general saving clause of the United States.

VIII

The indictment in this case seeks to charge a conspiracy to violate the Connally Act of 1935 and to charge substantive offenses committed against said act of 1935. Said alleged violations of the law depend upon the shipment in interstate commerce of the contraband

oil, which oil is defined as "petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a state or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such state, or any
42 of the products of such petroleum." Said indictment predicates the offense charged upon the violation or shipment of oil produced in violation of the proration laws of the State of Texas. The Proration Act of the State of Texas of 1935 under which it is charged the oil involved in this indictment was contraband, being the Act of 1935, 44th Legislature, Regular Session, Chapter 76, page 180, and commonly known as 6049c and 6049d of Vernon's Texas Statutes 1938, expired under its own terms under Section 20 of said act on September 1, 1937, and is no longer in force and was not in force at the time the indictment in this case was returned. The extension of said Texas act by the amendment of Section 20 of said Act by the Act of 1937, 45th Legislature, Chapter 15, page 17, insofar as it purports to continue the penalties arising for offenses committed under the Act of 1935, is ex post facto and violates the Constitution of the United States of America and the 5th Amendment thereto, and the Constitution of the State of Texas, Article 1, Section 16, and is void.

IX

The Texas Act of 1937, 45th Legislature, Chapter 15, page 17, attempting to extend the Texas Proration Law of 1935 by amending Section 20 thereof, is to be construed prospectively as applying to offenses committed in the future and said act does not support the prosecution of prior offenses committed before the expiration of the original act so as to support an indictment brought after the expiration of said original act and a prosecution pending after the expiration of the original act.

X

The effect of the foregoing construction is not abrogated by any saving clause either in the original Texas Proration Act or in the attempted extension thereof or in any general saving clause under the laws of the State of Texas.

XI

The Statutes of the State of Texas and the orders, rules,
43 and regulations of the Railroad Commission sought to be referred to in said indictment are not in force or effect because the purported and attempted extension of the Proration Act of 1935 by the amendment of Section 20 of said Act by the Act of 1937, 45th Legislature, Chapter 15, page 17, attempted to revive, re-enact and extend the Texas Proration Act of 1935 in its entirety without re-enacting the

section and sections of said act of 1935 which it was sought to revive and without re-enacting and publishing said Act of 1935 at length, and violates Article 3, Section 36, of the Constitution of Texas which reads as follows: "Section 36. No law shall be revived or amended by reference to its title but in such case the act revived or the section or sections amended shall be re-enacted and published at length."

XII

The said indictment, and each and every count thereof, fail to charge a violation of an Act of Congress approved on February 25, 1935, Chapter 18, Section 31, 49th Statutes at Large 30, also known as Section 715b, Title 15, U. S. C. A., and commonly called the Connally Act of 1935.

XIII

The Act of February 25, 1935, 49 Statutes at Large 30, Section 715b, Title 15, U. S. C. A., is unconstitutional and void because it is in violation of the Constitution of the United States and the 5th, 9th and 10th Amendments thereto.

XIV

The indictment in this case does not charge a violation of the Connally Act because the said act under its terms applies to oil or a constituent part thereof that *was produced*, transported, or withdrawn from storage prior to the time the Connally Act went into effect on, to-wit, February 22, 1935, and to that oil which was produced, transported or withdrawn from storage in excess of the amount that was permitted to be produced, transported, or withdrawn from stor-
44 age by the Statutes of the State of Texas or the rules of the Railroad Commission prescribed thereunder and in existence on said date, and under its terms does not purport to apply to oil produced, transported or withdrawn from storage in the future in violation of the Statutes of the State of Texas or the rules and regulations of the Railroad Commission to be prescribed thereunder in the future, and it appears from the allegations of the indictment that all of the contraband oil alleged to have been transported in interstate commerce in said indictment was produced, transported and withdrawn from storage after the passage of said act.

XV

The Connally Act of 1935, by the Act of February 22, 1935, and the extension thereof of June 14, 1937, is invalid because it seeks to delegate to the Legislature of the State of Texas and to the Railroad Commission of the State of Texas and to any board, commission, officer, or other duly authorized agency of such state, the power in the future to declare what is a federal offense and such statute constitutes an

unlawful delegation of the powers of the legislative branch of the government of the United States and of the sovereignty of the United States in violation of the fundamental plan and form of the Constitution of the United States.

XVI

The Connally Act of 1935, being the act of February 22, 1935, and the extension thereof of June 14, 1937, is unconstitutional and void under the 6th Amendment of the Constitution of the United States because said act does not sufficiently define an offense so as to inform the accused in advance of the nature and cause of the accusation with which he is charged or to be charged in that said act leaves to the determination of what shall constitute the offense and the description of the offense, violations of the orders of state boards, commissions, and agencies, of which the defendant and courts are not required to take judicial knowledge and which orders are to be passed and promulgated in the future and which orders the accused is unable to know from the act itself.

XVII

The indictment is wholly insufficient because it appears from the face thereof and from the allegations of the various counts thereof that the conspiracy and several offenses were committed and completed more than three years prior to the returning of the indictment in this case and that the prosecution for said conspiracy and offenses at the time of the bringing of the indictment were barred by the three-year statute of limitations, and there are no exceptions to the limitation statute which would require the raising of this question on a plea of not guilty.

XVIII

That said indictment, and each and every count thereof, is so uncertain and indefinite that said indictment does not apprise this defendant of the nature of the crime with which he is charged, and the said indictment, and each and every count thereof, does not set forth the necessary elements of the offense sought to be charged as required by the 6th Amendment to the Constitution of the United States.

XIX

Defendant Rene Allred says that said indictment is insufficient, and in particular Count 1, paragraph 2, on page 1 thereof, wherein it is alleged that the conspiracy was formed in the Southern District of Texas and within the jurisdiction of this court, because the particular time, place, and circumstances under which said agreement and conspiracy was formed are not set out with sufficient definiteness to enable this defendant to prepare his defense.

XX

Defendant says that said indictment, and Count 1 thereof, is
46 insufficient and in particular on page 2 thereof, wherein it is alleged that the defendant violated the Act of February 22, 1935, being Public No. 14, 74th Congress, because said act has expired and it is not sought to bring the offenses charged under the provisions of the amendment to said act extending the provisions of said act.

XXI

Defendant says that in said indictment, and Count 1 thereof, is insufficient and in particular on page 2 thereof, because said indictment does not allege whether the offenses charged were brought under the original act of 1935 or under the amended act.

XXII

Said indictment, and Count 1 thereof, is insufficient, and in particular on page 2 thereof, because it is alleged that the defendants conspired to transport through interstate commerce oil which *was produced*, transported, and withdrawn from storage in excess of the amounts permitted to be produced, which allegations would refer to oil produced prior to the formation of the conspiracy, while the subsequent allegations of the indictment setting for the overt acts refer to oil produced after the formation of such conspiracy, and said allegations are inconsistent.

XXIII

Said indictment, and Count 1 thereof, is insufficient, and particularly on page 2 thereof, because it is not alleged that this defendant or any of the defendants knew that the oil which was to be transported in interstate commerce was contraband or that said oil had been produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported and withdrawn from storage under the laws of the State of Texas and under the orders, rules, and regulations of the Railroad Commission of the State of Texas.

XXIV

Said indictment, and Count 1 thereof, and particularly
47 on page 2 thereof does not allege that the oil transported in interstate commerce was unlawfully, knowingly, and willfully produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn under the laws of the State of Texas and under the orders, rules, and regulations of the Railroad Commission of the State of Texas.

XXV

Said indictment, and Count 1 thereof, and particularly on page 2 thereof, is insufficient in that it alleges that this defendant and the several conspirators conspired to commit divers, various and sundry offenses against the United States of America, to-wit, conspired to violate the Connally Act of 1935, and said allegation is duplicitous if said conspiracy and said Count 1 are based upon a conspiracy to commit more than one offense and if said Count is limited to a conspiracy to violate the Connally Act, then said allegations alleging a conspiracy to commit various and sundry offenses is repugnant to the allegation that the defendants conspired to violate the Connally Act, and said allegation is prejudicial in that it would seek to impress the court and jury with the idea that the defendants had entered into a conspiracy to commit several offenses but that the Government was limiting this prosecution to the conspiracy to commit one offense.

XXVI

Said indictment, and Count 1 thereof, and in particular on page 2 thereof, is insufficient because where said indictment alleges that defendants conspired to violate the Connally Act of 1935 by producing and transporting and withdrawing from storage petroleum which was produced and transported and withdrawn in excess of amounts permitted by the laws of the State of Texas and the orders, rules, and regulations of the Railroad Commission, said acts do not constitute a violation of the Connally Act, and if said allegation
48 can be considered as surplusage said allegation is prejudicial in charging the commission of offenses not prohibited by the Connally Act.

XXVII

Said indictment, and Count 1 thereof, and particularly on pages 2 and 3 thereof, is insufficient because in alleging that the defendants conspired to violate the Connally Act by transporting in interstate commerce oil produced in violation of the Texas laws and the orders of the Railroad Commission of Texas, it is not alleged what specific law of the State of Texas, or which provision or section of the Texas law said oil was produced, transported, and withdrawn in violation of, and it is not alleged which rule of the Railroad Commission of the State of Texas and its officers said oil was produced, transported, and withdrawn from storage in violation of. That there are many sections of the Texas Proration Law prohibiting and making unlawful various and sundry acts. That there are many and varied rules and regulations of the Railroad Commission of Texas having to do with spacing, proration, storage, production, etc., applying to various oil fields in the State of Texas and to various wells and properties within the same oil field, and said Count and said allegations of said indictment do not state what law and what section of the law and what

provision of the law, and which particular rule and regulation of the Railroad Commission was violated in the production of said alleged contraband oil, and this defendant is unable from said indictment to know what statute, rules, and regulations have been violated by the production, transportation, and withdrawing of the oil from storage which it is alleged this defendant conspired to transport through interstate commerce.

XXVIII

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient because the indictment attempts to allege that certain conspirators did do various and separate acts which it
49 appears constitute separate conspiracies and which are not connected by the allegations of the indictment to the general conspiracy under which the defendants are charged to have conspired to violate the Connally Act by the transporting of contraband oil through interstate commerce.

XXIX

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient wherein it is alleged that certain conspirators did produce oil in excess of that permitted by the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas from two designated leases, because it does not appear in the allegations of said indictment which rules and regulations of the Railroad Commission were to be violated by the production of said oil from said leases, whether spacing rules, proration rules, storage rules, transportation rules, rules requiring certain reports and records, and the defendant is unable to ascertain from said indictment which particular rules and regulations it is intended by said indictment to allege that said oil was to be produced in violation of.

XXX

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient in so far as it alleges that certain conspirators were to file false and fraudulent tender, operation statements, monthly pipeline and crude oil storage reports and monthly producer's reports, because the nature and character of said false and fraudulent statements is not set out and it does not appear how said tender, operation statements or said pipeline reports or said producer's reports were false and fraudulent, and this defendant is unable to know with what particular false and fraudulent reports he is charged.

XXXI

Said indictment, and Count 1 thereof, and particularly page 3
50 thereof, is insufficient wherein it is alleged that said conspirators were to forge, procure, and furnish crude oil tenders, because

it does not appear from the allegations thereof of what the forgery consisted and what particular tenders were to be forged and whose name was to be forged to said tenders, and because it is not in violation of any rule or regulation of the Railroad Commission of Texas to procure and furnish crude oil tenders if said tenders were not false, fraudulent, or forged.

XXXII

Said indictment, and Count 1 thereof, and particularly page 3 thereof, is insufficient wherein it is alleged beginning "certain conspirators were to file false and fraudulent reports" and ending, "which in fact were not valid crude oil tenders form SW3," because it is not alleged that the oil covered by said false and fraudulent reports and by said forged and improper tenders was or was to be in excess of the amount of oil permitted to be produced by the laws of the State of Texas and the rules and regulations of the Railroad Commission of Texas, and it is not a violation of the Connally Act to transport in interstate commerce any oil covered by a false and fraudulent report or by a forged or improper tender unless said oil was in excess of the amount permitted to be produced by the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas.

XXXIII

Said indictment, and Count 1 thereof, and particularly on page 3 thereof, is insufficient wherein it is alleged that certain conspirators were to transport oil by pipeline to certain docks on the Houston Ship Channel in Harris County, Texas, because such transportation is not an interstate shipment and does not constitute a violation of the laws of the United States and does not constitute a violation of Section 715b, Title 15, U. S. C. A., as alleged in said paragraph of said indictment.

51

XXXIV

Said indictment, and Count 1 thereof, is insufficient in the allegations, of the overt acts, in that none of said overt acts, numbered from 1 to 45, have sufficient allegations nor are there sufficient allegations in the other portions of the indictment to show how said overt acts affected the object and purpose of the conspiracy with which the defendants are charged. All of said overt acts are mere allegations of things alleged to have been done that in themselves are not illegal and which are not, under the allegations of the indictment, necessarily connected with or a part of the alleged conspiracy. Said indictment nowhere states any facts indicating in what respect the overt acts alleged constituted a violation of the law.

XXXV

Said indictment is insufficient in Count 1 thereof as to all the overt acts alleged except 39, 40, 41, and 42, because none of said overt acts are connected with the defendant, Rene Allred, and there are no allegations in the indictment that seek to connect the said defendant to said overt acts or show how said overt acts in any way were connected with the conspiracy with which the said Rene Allred may have been connected, if he was connected with a conspiracy.

XXXVI

Said indictment, and Count 1 thereof, is insufficient wherein an overt act is alleged to have been committed on August 20, 1935, by Neal Powers, Otis H. Gibson, and D. D. Feldman, because said overt act occurred prior to the 4th day of September A. D. 1935, on which date it is alleged the conspiracy commenced and which is the first date on which it is alleged the defendant Rene Allred had any connection with such conspiracy, and if said conference on said August 20, 1935, was preliminary to said conspiracy it is not alleged that the defendant Rene Allred had any knowledge of such meeting and he could not be bound by the acts of the parties at said meeting.

52

XXXVII

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the first overt act, because there is no allegation as to who Mark I. Westheimer was and he is not alleged to be a conspirator and could not be included in the designation of those to the grand jury unknown, and it does not appear who the said Mark I. Westheimer was or what effect, if any, it had upon the conspiracy if the said Neal Powers had been successful in persuading the said Westheimer that the said transactions were in all things lawful.

XXXVIII

Said indictment, and Count 1 thereof, is insufficient in the second overt act alleged, wherein it is alleged that the defendants endeavored to secure the consent of the owner of certain royalties to secure permission for the running of more oil than was permitted under the orders of the Railroad Commission because said allegation is indefinite, does not state the amount of oil, does not state what the order of the Railroad Commission was fixing the amount of the allowable oil, and it is not made sufficiently plain which order of the Railroad Commission was sought to be violated.

XXXIX

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the third overt act because it would not be unlawful or in

violation of any laws of the State of Texas or of the Railroad Commission to construct the pipeline referred to without the consent and knowledge of the Railroad Commission and the allegation that the construction and completion was secret and clandestine is prejudicial and is an effort to make the court and jury believe that an innocent act was wrongful and fraudulent.

XL

53 Said indictment, and Count 1 thereof, is insufficient in the allegation of the fourth overt act because said act is wholly lawful and it does not appear that the amount of oil which was contracted to be sold was excess oil or that the purchase and contract to purchase said oil was in any way unlawful.

XLI

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the overt acts numbered 7–20, inclusive, 24–26, inclusive, 32, 36, and 38, because in none of said allegations as to overt acts is it alleged what order of the Railroad Commission or law of the State of Texas said oil was produced in violation of. Said allegations do not set out the legal allowable for oil in the Conroe field nor on said lease in said field, and the allegation that the specific amount of oil alleged to have been produced as contraband oil was contraband is a conclusion and the indictment should state the facts which constituted and rendered such oil contraband oil.

XLII

Said indictment, and Count 1 thereof, is insufficient in the allegation of the twenty-seventh overt act because the contraband oil for which it is alleged N. B. Carter was paid $700.00 is not sufficiently described and there is no allegation showing how said payment for said contraband oil was in any way connected with the conspiracy with which the defendant Rene Allred is charged and that no allegation is made that the defendant Rene Allred and the defendant Neal Powers had any knowledge said money was being paid or for what the payment was being made if it was made, or that said payment was made in carrying out the particular conspiracy alleged.

XLIII

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the twenty-eighth overt act because said allegation is indefiinite in alleging that a much greater amount of oil than
54 the allowable was produced from said lease during the month of December 1935. Said allegations should state the legal amount permitted under the rules and regulations of the Railroad Commission and the actual amount which was produced.

XLIV

Said indictment, and Count 1 thereof, is insufficient in the allegation of the 34th overt act wherein it is alleged that a greater amount of oil than the allowable was produced and delivered from said lease during the month of January 1936, because the allegation is indefinite and said allegation should set out the legal allowable and the actual amount of oil produced during said month.

XLV

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the fortieth overt act because said allegation does not set out the substance of the telephone talk with Rene Allred and does not allege that said telephone talk was in furtherance of the conspiracy and it appears that said act was a perfectly lawful act and the presumption is that it would be lawful in the absence of some express allegation connection the talk in some way with the conspiracy with which the defendants are charged.

The same objection aforesaid applies to the allegations as to the forty-first and forty-second overt acts.

XLVI

Said indictment, and Count 1 thereof, is insufficient as to the allegation of the forty-third overt act because it appears in the allegations therein that said act could not have in any way contributed to or assisted in the carrying out of the conspiracy but was a mere transaction between certain of the conspirators between themselves and not in furtherance of the general conspiracy and had reference to declarations of the conspirators after the commission of the acts referred to.

XLVII

55 Said indictment, and Count 1 thereof, is insufficient as to the allegations of the forty-fourth overt act because there is no allegation connecting said act with the conspiracy and it does not appear from said allegation that said act was or could have been in any way connected with or in furtherance of the general conspiracy.

XLVIII

Said indictment, and Count 1 thereof, is insufficient in the allegations as to the forty-fifth overt act because it is not alleged that the 30,000 barrels of hot oil tender had reference to any oil or a part of any oil which was transported in interstate commerce while contraband in nature. That said allegation is a mere isolated transaction attempting to show a violation of a state law in no way

connected with the general conspiracy and charges a separate and isolated offense not cognizable by federal law.

XLIX

Said indictment, and Counts 2 to 10 thereof, are insufficient because in none of said counts is it alleged that the defendants knew that the oil alleged to have been transported in interstate commerce or a constituent part thereof was transported or withdrawn from storage in excess of the amount permitted to be produced, transported and withdrawn from storage under the laws of the State of Texas and the orders, rules, and regulations of the Railroad Commission of the State of Texas.

L

Said indictment is insufficient as to Counts 2 to 10 thereof because it is not alleged in any of said counts what particular law or provision of the Texas law or what particular rule, regulation, or order prescribed by the Railroad Commission was violated so as to constitute the oil referred to as contraband oil.

LI

56 Said indictment is insufficient as the Counts 2 to 10 thereof because the allegations therein are indefinite and none of said counts allege the amount or proportion of the oil transported which constituted contraband oil, if any.

LII

Said indictment is insufficient as to Counts 2 to 10 thereof because in none of said counts is it alleged how the oil was transported, either by pipeline, train, or ship, and it is not alleged when said oil was produced or where said oil was produced, or upon what lease said oil was produced, so as to connect the production and transportation of said oil with the violation of any particular rule or decision of the Railroad Commission of the State of Texas.

LIII

Said indictment, and Count 1 thereof, is insufficient because taking the allegations of said indictment as a whole and all of the overt acts alleged in said Count 1, same show that the defendant's agreement, if any, was to produce, transport, and withdraw from storage oil and ship the same in a purely intrastate transaction from the leases referred to the terminal in Houston, Texas, at the Houston Ship Channel, and that said plan and agreement did not contemplate or it is not alleged that it contemplated that said oil should enter into or be transported in interstate commerce, and that there is no

allegation that any of the defendants knew or planned that said oil should enter into or be transported in interstate commerce after it came to rest at the Houston Ship Channel.

Wherefore, defendant prays that his demurrers to the indictment be sustained and that said indictment be quashed and dismissed and that this prosecution be dismissed.

This the 14th day of October, A. D. 1938.

Respectfully submitted.

E. A. SIMPSON,
Amarillo, Texas.

57 ELBERT HOOPER,
Austin, Texas.
MYRON G. BLALOCK,
Marshall, Texas.
CLARENCE LOHMAN,
Houston, Texas.
JACK BLALOCK,
Houston, Texas.
ROBERT E. COFER,
JOHN D. COFER,
Austin, Texas.

[File endorsement omitted.]

58 In United States District Court for the Southern District of Texas, Houston Division

Cr. No. 7354

UNITED STATES OF AMERICA, PLAINTIFF

vs.

H. E. HINES, NEAL POWERS, RENE ALLRED, DEFENDANTS

Wm. W. Barron, Special Assistant to the Attorney General, Washington, D. C., for United States of America. E. A. Simpson, of Amarillo, Texas; Elbert Hooper, of Austin, Texas; Robert E. Cofer, of Austin, Texas; John D. Cofer, of Austin, Texas; Myron G. Blalock, of Marshall, Texas; Jack Blalock, of Houston, Texas; and Clarence Lohman, of Houston, Texas; for Defendants Neal Powers and Rene Allred.

Opinion

Filed January 4, 1939

KENNERLY, District Judge: This is a case arising under an Act of Congress approved and effective February 22, 1935, and expiring June 16, 1937, regulating the Interstate Transportation of Petroleum Products, and generally known as the Connally Act (49 Stat. 30, Sections 715 to 715 (1) of Title 15, U. S. C. A.), and an Act of Congress approved and effective June 14, 1937, continuing the Connally Act

in force until June 30, 1939 (50 Stat. 257, Sections 715 to 715 (1) of Title 15, U. S. C. A.). For convenience, the Act of February 22, 1935, is referred to as the First Connally Act or as the First Act, and the Act of June 16, 1937, as the Second Connally Act or the Second Act.

This is the third criminal prosecution in this Court under such Acts. In the first case (No. 6894, United States v. Gibson et al.), the Indictment was filed against a large number of Defendants, and the case disposed of as to all except three or four of them while the First Act was still in effect. As to the remaining three or four defendants, it was dismissed by the Government after the Second Act became effective. In the second case (No. 7016, United States v. Gibson etal.), the Indictment was filed against several defendants after the Second Act became effective and all defendants without questioning the Indictment entered pleas of guilty except one, and the case was dismissed by the Government against that one.

In this case, Defendants Allred and Powers are charged by Indictment filed September 17, 1938, with Conspiracy (Section 88, Title 18, U. S. C. A.) to violate such Acts and with violations of such
59 Acts, and have demurred to and moved to quash and dismiss the indictment and this is a hearing on such Demurrer and Motion.

1. Defendants say that the particular thing or things claimed to have been done by them are not so set forth in the Indictment as to inform them of the nature and character of the charge against them, in that while they are charged under such Acts with conspiring to transport and transporting in interstate commerce contraband oil within the meaning of such Acts, i. e., petroleum produced, transported, or withdrawn from storage in violation of the Laws of Texas and the regulations and orders of the Railroad Commission of Texas, the Indictment does not set forth the particular Law, Regulation, or Order violated and does not show such Law, Regulation, or Order to have been valid. And that the Indictment does not set forth the amount of oil so produced, where and by whom produced, the circumstances of production, etc.

The Conspiracy Count sets forth the names of the alleged conspirators (so far as known to the Grand Jury), the time during which the conspiracy existed, the plan to transport contraband oil in interstate commerce, i. e., from the Conroe Field in Montgomery County, in the State of Texas, by a route named to Marcus Hook, in the State of Pennsylvania, the manner in which such oil was or was to be gathered preparatory to transportation, and the property or lease on which such oil, or some of it, was to be and was produced. It is set forth that the conspiracy was formed:

"to commit divers, various, and sundry offenses against the United States of America, to-wit:

"(a) To unlawfully and knowingly violate the laws of the United States, in particular an Act of Congress approved February 22, 1935,

being Public, No. 14, 74th Congress, and entitled 'An Act to regulate interstate and Foreign Commerce in Petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of the State laws and for other purposes' (as amended) by producing, transporting, and withdrawing from storage petroleum, which, or a constituent part of which, was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of the State of Texas, and under the regulations and orders prescribed thereunder by the Railroad Commission of the State of Texas, and its officers, by producing oil in excess of the allowed oil, as provided by the orders of the Railroad Commission," etc.

There are set forth 45 separate and distinct Overt Acts.

The Substantive counts in the Indictment each sets forth the date of the alleged offense, the transportation of contraband oil in Interstate Commerce, i. e., from Conroe Oil Field in Montgomery County, in Texas, to Marcus Hook, in the State of Pennsylvania, the quantity transported, and that such oil, or a constituent part thereof:

'was produced, transported, and withdrawn from storage in excess of the amounts permitted to be produced, transported, and withdrawn from storage, under the laws of the State of Texas, and the regulations and orders prescribed by the Railroad Commission of the State of Texas, a duly authorized agency of such State."

On demurrer and motion to quash the Indictment and on these particular complaints urged against it, I think the Indictment must be sustained. Whether Defendants may require the Government, by Bill of Particulars, to be more specific with respect thereto is not before me.

It is clear also that the Overt Acts in the Conspiracy Count are sufficient. It need not be shown in the Indictment, as Defendants contend, in what manner such Overt Acts were connected with the alleged conspiracy, nor is it necessary that such acts be unlawful within themselves.

It is likewise clear that the Indictment, both in the Conspiracy Count and in the Substantive Counts, sufficiently sets forth that Defendants knowingly did the different acts and things they are charged with doing.

2. Defendants also contend that the Acts apply to Oil, etc., produced prior to their enactment, and not to that thereafter produced.

This question was before the Court and disposed of, and I think correctly disposed of, in United States v. Gibson et al.; decided May 21, 1937. It was there said:

"It is also said that the Connally Act is only applicable to oil produced, etc., before the effective date of such Act (February 22, 1935), and in violation of Laws and Regulations of Texas in existence and in force prior to such effective date (February 22, 1935).

"The portion of Section 715b under which the Indictment is drawn is as follows:

"'The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is hereby prohibited.'

"Contraband Oil is defined by Section 715a as follows:—

"'The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum.'

"And is further defined in Section 715b:

"'For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.'"

61 "It is plain that what is prohibited is transportation in Interstate Commerce of contraband oil produced both before and after the effective date of the Act, and under Laws and Regulations in existence and in force both before and after such effective date."

3. Defendants bring forward many contentions with respect to the constitutional validity of the Acts. In President of the United States v. Artex Refineries Sales Corporation, 11 Fed. Supp. 189, this Court said:

"Defendants, by their motion to dismiss, attack the constitutional validity of the Connally Act. I think that question must be regarded as settled in this (Fifth) circuit against defendants' contention by the ruling of the Circuit Court of Appeals, in passing upon the validity of Section 9 of the National Industrial Recovery Act (Section 709, Title 15, U. S. C. A.), in the Ryan and Panama Cases (Ryan v. Amazon Petroleum Corporation, 71 F. (2d) 1, 2; Ryan v. Panama Refining Co., 71 F. (2d) 8), which ruling this court deems it proper to follow."

Several subsequent decisions support this view. I adhere to the ruling there made and uphold the constitutional validity of both Acts as against the contentions of Defendants now made.

4. Count One of the Indictment charges a conspiracy to violate such Acts beginning September 4, 1935, and existing until March 15, 1937, and the Substantive Counts charge violations of such Acts on and between November 4, 1935, and March 20, 1936. All are alleged to have been between September 4, 1935, and March 15, 1937, at a time when the production, transportation, etc., of petroleum oil was controlled and regulated in Texas by Title 102 of Vernon's Civil

Statutes of Texas (Texas Revised Civil Statutes of 1925 and Amendments), and particularly Articles 6049c and 6049d of Vernon's Statute regarding Proration (Act of 44th Texas Legislature of 1935, Ch. 76, p. 180), Section 20 of which provided that the provisions of such Act should end and terminate September 1, 1937.

The 45th Texas Legislature in 1937 passed an Act providing that the provisions of the Act of 1935 should end and terminate September 1, 1939.

Defendants say that this Indictment and this prosecution under the Connally Acts must fall because neither in the Texas Act of 1935 nor in the Texas Act of 1937 is there to be found a saving clause as to violations of or penalties arising under the Texas Act of 1935, and that if there be a saving clause in the Texas Act of 1937, it is retroactive, etc. The questions are interesting ones, and perhaps serious ones, but in view of the next question which Defendants raise
62 and the disposition thereof, it does not seem necessary to decide them.

While the Indictment is drawn under both the First Connally Act (in force from February 22, 1935, to June 16, 1937) and the Second Connally Act (in force from June 14, 1937, to June 30, 1939), it clearly appears that all violations charged against Defendants are of the First Act.

Defendants contend that since neither the First Act nor the Second Act contains a saving clause, and the Second Act is silent as to the Indictment and prosecution of persons charged with violating the First Act, Defendants cannot, since the expiration of the First Act, be lawfully prosecuted for violation thereof, and that the Indictment should be quashed and the case dismissed.

The general and well-settled rule is stated in The Irresistible (7 Wheat (U. S.) 551; 5 L. E. 520) [Italics mine]:

"This is an appeal from a sentence of the circuit court of the United States for the district of Maryland, dismissing an information filed in that court against the brig 'La Irresistible,' as forfeited, under the acts of congress made for the preservation of the neutrality of the United States. The offence charged in the information, was committed under the act of 1817, and the only question is, whether the information can be sustained, after the time when that act would have expired by its own limitation?

"The act was to continue in force two years after the 3d of March, 1817. On the 20th of April, 1818, congress passed an act making further provision on the same subject, which repealed all former acts on that subject, and among these the act of 1817; and annexed to the repealing clause the following proviso, 'Provided, nevertheless, that persons having offended against any of the acts aforesaid may be prosecuted, convicted, and punished, as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.' The obvious construction of this clause is, that the power to prosecute, convict, and

punish offenders against either of the repealed acts, remains as if the repealing act had never been passed. It does not create a power to punish, but preserves that which before existed. *Now, it is well settled, that an offence against a temporary act cannot be punished, after the expiration of the act, unless a particular provision be made by law for the purpose.*"

See also U. S. v. Tynan, 11 Wallace 88; 20 L. E. 153; Yeaten v. U. S.; 5 Cranch 281; 3 L. Ed. 101.

The question for determination is whether particular provision has been made by law for the indictment and prosecution of persons who may have violated the First Act, which expired as stated June 16, 1937.

The Second Act is as follows:

"An Act to continue in effect until June 30, 1939, the Act
63 entitled 'An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes,' approved February 22, 1935.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13 of the Act entitled 'An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes,' approved February 22, 1935, is amended by striking out 'June 16, 1937,' and inserting in lieu thereof 'June 30, 1939.'"

"Approved, June 14, 1937."

As Defendants insist, it is silent on the question of the prosecution of those who may have violated the First Act. It simply changes the date of expiration of the First Act from June 16, 1937, to June 30, 1939. Those who violated the First Act were only guilty of a misdemeanor. It was passed in aid of the laws of the States regulating a perfectly legitimate business—the production of petroleum oil. It was by its own terms temporary, indicating that changing conditions in the production of petroleum oil, or changes in the laws of the States regulating such production, or other reason would make it in the public interest for it to terminate. There were no provisions therein for the prosecution after its expiration of those who had violated it before such expiration.

The last violation of the First Act, as charged in the substantive counts of the Indictment, is alleged to have occurred March 20, 1936, more than a year before the expiration date of the First Act, more than a year before the effective date of the Second Act, and nearly two and one-half years before the filing of the Indictment. The Indictment was filed nearly one and one-half years after the alleged t[illegible]mination of the Conspiracy charged in Count One.

Viewing the matter from all standpoints, I think it must be held that there is and can be no certainty that Congress, by passing the Second Act, intended to preserve the right of the Government to prosecute violations of the First Act.

But, citing Schench v. United States, 249 U. S. 47, 63 L. Ed. 473, and other cases, the Government insists that the mere passage of the Second Act is sufficient evidence of the intent of Congress that those who had violated the First Act should be prosecuted. I
64 find no case that it seems to me goes so far. The most that can be said with respect to the Second Act is that it provides for the prosecution of violations occurring after its effective date (June 14, 1937) and prior to the date of its expiration (June 30, 1939). Kring v. State of Missouri, 17 Otto, 221, 107 U. S. 231, 27 L. Ed. 509, 2 S. Ct. 451. Murray v. Gibson, 15 How. (U. S.) 421, 14 L. Ed. 755. Brewster v. Gage, 280 U. S. 338, 74 L. Ed. 457, 463. United States v. St. Louis, S. F. & T. R. Co., 270 U. S. 1, 70 L. Ed. 435. Russell v. United States, 278 U. S. 181, 73 L. Ed. 255. Chew Heong v. United States, 112 U. S. 536, 28 L. Ed. 770.

The Government also says that Section 29, Title 1, U. S. C. A., provides the necessary provision respecting prosecutions of violations of the First Act. This reads as follows [italics mine]:

"The *repeal* of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

An examination of the common law rule, and of the history of this section and its wording, is convincing that it has no application to temporary Acts such as was the First Act, but only to *repeals*. There must be a plain provision with respect to Temporary Acts. Nothing appears in Great Northern Railway Co. v. United States, 208 U. S. 459, 52 L. Ed. 573. Hertz v. Woodman, 218 U. S. 212, 54 L. Ed. 1005, and other cases cited by the Government, contrary to this view, and there is much to be found in The Irresistable, 7 Wheat. (U. S.) 551, 5 L. Ed. 520; United States v. Curtiss-Wright Export Corp., 299 U. S. 304, 81 L. Ed. 255; United States v. Curtiss-Wright Export Corp., 14 Fed. Supp. 230; Missouri-Pac. R. Co. v. United States, 16 Fed. Supp. 752 (D. C., E. D. Mo., Three Judge Court); South Carolina v. Gaillard, 101 U. S. 433, 25 L. Ed. 937; Baltimore & Pacific R. R. Co. v. Grant, 98 U. S. 398, 25 L. Ed. 231; National Exchange Bank v. Peters, 144 U. S. 573, 36 L. Ed. 545; Sherman v. Grinnell, 123 U. S. 679, 31 L. Ed. 278; Gurnee v. County of Patrick, 137 U. S. 145, 34 L. Ed. 601; U. S. v. Chambers, 291 U. S. 217, 78 L. Ed. 763, 54 S. Ct. 434; Moore v. United States, 85 Fed. 765, 29 C. C. A. 269; Federal Land Bank v. United States Bank, 13 Fed. (2d) 36; United States v. Reisinger, 128 U. S. 403, 32 L. Ed. 480, and Great Northern R. Co. v.

United States, 208 U. S. 452, 52 L. Ed. 567, cited by Defendants to support this view.

The Government also takes the position that the Second Act is an amendment of the First Act and cites Sage v. State, 127
65 Ind. 15, 26 N. E. 667; People v. Schoenberg, 161 Mich. 95, 125 N. W. 779; Hair v. State, 16 Nebr. 601, 21 N. W. 464; Jones v. State, 72 Tex. Cr. App. 504, 163 S. W. 81; Britton v. State, 101 Miss. 574, 58 So. 530; Whatley v. State, 46 Fla. 145, 35 S. 80, and other cases, holding generally that an amendment to a statute which is a substantial reenactment thereof does not prevent prosecutions of violations of the Amended Statute. The position is a strong one, but I fail to discover in that line of cases anything akin to the situation we have here of an Act of Congress, not permanent, but temporary, being amended by a Second Act which changes its expiration date, but is silent on the subject of the prosecution of previous violations of the Amended Act.

The First Connally Act having by its own terms expired June 16, 1937, and there now being no provision for the indictment and prosecution of those who violated it while it was in effect, I think Defendants' Demurrer to the Indictment and their Motion to Quash the Indictment must for that reason be sustained and the case dismissed.

T. M. KENNERLY,
Judge Presiding.

[File endorsement omitted.]

66 In United States District Court

Order sustaining demurrers and motions to quash and dismissing case as to defendants Neal Powers and Rene Allred

Entered January 4, 1939

And thereupon the court being opened in due form by order of the Judge, the following proceedings were had to-wit:

[Title omitted.]

January 4, 1939. Demurrer and Motion to Quash, of Defendants Neal Powers and Rene Allred sustained, and the case as to them dismissed. See Opinion this day filed. The Clerk will notify all counsel. T. M. K.

67 In United States District Court

[Title omitted.]

Petition for appeal

Filed January 28, 1939

Comes now the United States of America, plaintiff herein, and states that on the 4th day of January 1939, demurrers and motions to quash interposed by the defendants Neal Powers and Rene Allred,

to each and every count of the indictment herein were by the Court sustained and the plaintiff feeling aggrieved at the ruling of the said District Court sustaining said demurrers and motions to quash, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said Judgment and Order and that a Transcript of Record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement, showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
DOUGLAS W. MCGREGOR,
United States Attorney,
Southern District of Texas.

[File endorsement omitted.]

80 In United States District Court

[Title omitted.]

Assignments of error

Filed January 28, 1939

Comes now the United States of America, by Douglas W. McGregor, United States Attorney for the Southern District of Texas, and avers that in the record, proceedings and judgment herein, there is manifest error and against the just rights of the said plaintiff, in this, to-wit:

1. That the court committed material error against the plaintiff in holding that prosecution under the indictment was barred on the ground that violations of the Connally Act of February 22, 1935 (U. S. C. Title 15, Sections 715-715*l*) committed prior to June 16, 1937, could not be punished thereafter, notwithstanding the provisions of the Act of June 14, 1937, extending the duration of the Connally Act until June 30, 1939.

2. That the court erred in applying the rule that after the expiration of a law no punishment may be inflicted for violations committed while it was in force, unless special provision is made therefor, since there was no attempted prosecution of the offenses involved subsequent to the expiration of the statute upon which the indictment was predicated, the Connally Act of 1935 having been extended by Congress during its life to a date which has not yet expired, i. e., June 30, 1939.

3. The court erred in rejecting as inapplicable the rule that where a statute is amended by substantially reenacting it, offenses occurring prior to amendment may be prosecuted thereafter.

4. The court erred in holding that prosecution under the indictment was not saved by virtue of the provisions of R. S. Section 13.

81 5. The court erred in failing to hold that prosecution under the conspiracy could *could* be maintained, even though prosecution under the substantive counts may not be sustainable.

6. The court committed material error against the plaintiff in sustaining demurrers of the defendants Neal Powers and Rene Allred and each of them to the indictment and to each count thereof.

7. The court committed material error against the plaintiff in sustaining the motions of the defendants Neal Powers and Rene Allred to quash the indictment and each and every count thereof.

DOUGLAS W. McGREGOR,
United States Attorney,
Southern District of Texas.

[File endorsement omitted.]

82 In United States District Court

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed January 28, 1939

This cause having come on this day before the Court on the petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the Judgment herein sustaining the demurrers and motions to quash interposed by the defendants Neal Powers and Rene Allred to the indictment in the said cause and to each and every count thereof, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is therefore, by the Court ordered and adjudged that the plaintiff herein, the United States of America, be and it is hereby allowed an appeal from the order and judgment of this Court in sustaining the demurrers and motions of the defendants to quash the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further ordered that the United States of America be and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Houston, Texas, this 28 day of January 1939.

T. M. KENNERLY, *Judge.*

83 [File endorsement omitted.]

86 [Clerk's certificate to foregoing transcript omitted in printing.]

87 [Citation in usual form showing service on Rene Allred and Neal Powers, filed Feb. 1, 1939, omitted in printing.]

89 In Supreme Court of the United States

[Title omitted.]

Statement of points relied upon and designation of entire record for printing

Filed March 17, 1939

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

ROBERT H. JACKSON,
Solicitor General.

[File endorsement omitted.]

[Endorsement on cover:] File No. 43,172. St. Texas, D. C. U. S. Term No. 687. The United States of America, Appellant *vs.* Neal Powers and Rene Allred. Filed February 17, 1939. Term No. 687 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1939

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